IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL NO.152 OF 2006
IN
SUMMONS FOR JUDGMENT NO.606 OF 2005
IN
SUMMARY SUIT NO.815 OF 2005

Zee Telefilms Ltd. .. Appellant
V/s
High Definition Television Pvt.Ltd. .. Respondent

Mr.Virag Tulzapurkar, Senior Advocate with Mr.Rohit Shetty and Mr.M.S.Motiwala i/by M/s.PDS Legal for the Appellant.

Mr.D.D.Madan, Senior Advocate i/by M/s.Kishore Thakordas & Co. for Respondent.

CORAM: DR.S.RADHAKRISHNAN &
S.J.VAZIFDAR, JJ.

DATE : 22.03.2006.

P.C.:

1. Heard the learned Counsel for the parties. By this Appeal, the Appellant is challenging an order dated 28th February, 2006 passed in Summons for Judgment whereby the learned Single Judge has granted conditional leave to defend the suit directing the Appellant (Defendant) to deposit Rs.60 lakhs within a period of four weeks from the date of that order.

2. We have perused the Agreement of Services and the relevant clause 3(i) of the said agreement with regard to **Consideration**, reads as under:-

> "In consideration of the services rendered by the Party No.2 as stipulated above, the Party No.1 shall pay to the Party No.2 a total consideration of Rs.1,75,000/- (Rupees One Lakh Seventy Five Thousand only) per episode within 30 (thirty) days after the first broadcast of the said programme."

3. Mr.Tulzapurkar, the learned Senior Counsel appearing on behalf of the Appellant has sought to contend that no payment is payable unless the Episodes are broadcasted. The aforesaid contention is totally without substance specially in view of Clause 29 of the Agreement with regard to **"Schedule of Payment"**, which reads as under:-

"100% PAYMENT THIRTY DAYS AFTER DELIVERY ACCEPTANCE"

4. We do not find any clause which indicates that no payment is required to be made unless the Episode is broadcasted. Over and above, the learned Counsel for the Respondent brought to our notice the original receipts indicating that the Appellant has been delivered with 51 Episodes. In fact there is clear admission on the part of the Appellant by the letter dated 27.12.2001 with regard to receipt of all the Episodes. In the said letter it is clearly mentioned by the Appellant that the payment of Episode No.17 and Episode Nos. 20 to 51 have not been paid to the Respondent. The said letter also states that they are forwarding the claim of the Respondents to the Accounts Department so as to release the payment as soon as possible. Another vital aspect is that, inspite of several demand letters being issued by the Respondent right from 31st July, 2003 till filing of the suit, there is not even a single letter from the Appellant denying thereby the receipt of the Episodes and/or denying the liability. In fact the order passed by the learned Single Judge is quite lenient. We do not find any substance in the Appeal. Appeal is therefore dismissed.

5. Now, Mr.Tulzapurkar, the learned Senior Counsel for the Appellant prays that instead of depositing Rs.60 lakhs as per the order of the learned Single Judge, the Appellant may be permitted to furnish a Bank Guarantee of a Nationalised Bank in the said sum of Rs.60 lakhs which would also carry the interest at the rate of 8% p.a. Accordingly, we permit the Appellant to furnish a Bank Guarantee of a Nationalised Bank to the Prothonotary and Senior Master in the said sum of Rs.60 lakhs which would also carry the interest at the rate of 8% p.a. We make it clear that the aforesaid rate of interest will be subject to the final order to be passed in the suit.

(DR.S.RADHAKRISHNAN, J.)

(S.J.VAZIFDAR, J.)